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10/565,498	01/23/2006	David Diamond	PIP137DIAM-US	2067
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NEIFELD IP LAW, PC 4813-B EISENHOWER AVENUE ALEXANDRIA, VA 22304			EXAMINER DAGNEW, SABA	
			ART UNIT 3688	PAPER NUMBER
			NOTIFICATION DATE 01/28/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/565,498	<b>Applicant(s)</b> DIAMOND ET AL.	
	<b>Examiner</b> SABA DAGNEW	<b>Art Unit</b> 3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7 April 2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 7, 10-23, 44-53, 57 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deaton et al (US Patent No 6,292,786 B1) in view of Smith (US Pub No. 2002/0103849 A1)

With respect to claims 1, 23, 44, and 58, Deaton teaches a computer method and system comprising:

a first POS computer system (***Figs. 2A-D, which teaches POS computer system***), said first POS computer system comprising a central processing unit, memory, a database of information stored in said memory (***Fig. 2E, where "storage" reads on database, memory 59 and processor 55***), and a POS terminal, said central processing unit having read write access to said database in said memory, said POS terminal designed to transmit transaction information and one or more customer IDs associated with a transaction to said central processing unit (***Figs 3 and . 4B which contain "card reader and keyboard monitor and printer"***) ;

stored incentive offer criteria including at least one of (1) threshold criteria for determining whether an incentive offer should be communicated to a consumer (***Col. 18, lines 37-43, where "discount" reads on incentive and "purchasing a product***

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*associated with the discount" reads on threshold criteria) and (2) terms criteria determining terms for said consumer obtaining an incentive defined by said incentive offer, wherein at least one of said threshold criteria and said terms criteria are applicable to transaction data (**Col. 4, lines 50-54**, where "manufacture offered incentive to customer based upon the customer purchase history, purchase made in a current transaction" reads on threshold criteria and terms criteria applicable to transaction and **Col 7, lines 46-55**) ; and*

said POS terminal including (1) a device for reading or inputting data Including both an ID of a customer (**Col. 7, lines 60-65**, which teaches smart card reader to receive identification of customer, **and Col. 8, lines 36-41**, which teaches reading customer identification card) and identity of products or services being purchased by said customer as part of a transaction (**Col. 7, lines 16-20**, which teaches scanner reading bar code of an item of the product purchase) and (2) a device for communicating information to said customer while said customer is conducting a transaction at said POS terminal (**Col. 8, lines 23-32**, which teaches a touch-sensitive screen for communicating information while consumer conduct transaction at Kiosk (POS)).

Deaton teaches the above elements including database, which contain a transaction data, such as product for purchase, coupon (incentive) being redeemed, bar code with a related price and a product description (**Col. 7, lines 9-29**). Deaton does not teaches stored movie showings data for at least one movie theater store defining movie showings in at least one theater in said at least one movie theater store

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and stored transactions data defining transactions associated with said at least one movie theater store including at least one of purchase of tickets for showing of movies and purchase of other items sold by said movie theater store.

However, Smith teaches stored movie showings data for at least one movie theater store defining movie showings in at least one theater in said at least one movie theater store (*paragraph [0034], which teaches data repository database, which stores information such as , expected date when the movie will be available to the theater, number of showings per day as well as the total numb of days cost of movie and etc...*) and stored transactions data defining transactions associated with said at least one movie theater store including at least one of purchase of tickets for showing of movies and purchase of other items sold by said movie theater store (*paragraph [0009], which teaches database contain ticket information*). Therefore, it would have been obvious to the one ordinary skill in the art at the time of the invitation to include a feature that stores movie information along with viewer information as taught by Smith in the system of Deaton in order to provide incentives based on viewers previous history and to increase sales.

With respect to claim 2, Deaton in view of Smith teaches all elements of claim 1; furthermore, Deaton teaches the system wherein said threshold criteria depend upon transaction data for a plurality of transactions associated with the same customer ID (*Col. 2, lines 25-36, where “product purchase information (transactions) in conjunction with an identification code of a customer purchasing the product” reads on transaction data associated with the same customer ID*).

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With respect to claim 3, Deaton in view of Smith teaches all elements of claim 1, except wherein said threshold criteria depend upon movie showings data.

Smith teaches the system wherein said threshold criteria depend upon movie showings data (**Fig. 3**, which teaches calculating estimated number of ticket, determine threshold and negotiate to increase number of shows). Therefore, it would have been obvious to the one ordinary skill in the art at the time of the invitation to include a feature that calculate threshold criteria as taught by Smith in the system of Deaton in order to increase sales.

With respect to claim 7, Deaton in view of Smith addressed by the rejection of claims 1 and 3 as cited above.

With respect to claim 10, Deaton in view of Smith teaches all elements of claim 1, including terms for said consumer obtaining an incentive defined by said incentive offer include at least one purchase from said first POS computer system of at least one ticket for a showing of a movie as cited in claim 1. However, Deaton does not teach purchased ticket at least one food item or at least one service item. Smith teaches purchased ticket at least one service item (**paragraph [0024]**, where “valid for a single event, day, etc...” reads on service item). Therefore, it would have been obvious to the one ordinary skill in the art at the time of the invitation to include a feature to identify viewers benefit by listing on the purchased ticket as taught by Smith in the system of Deaton in order to reduce fraudulent activates.

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With respect to claim 11, Deaton in view of Smith addressed by the rejection of claims 1 and 10 as cited above.

With respect to claim 12, Deaton in view of Smith addressed by the rejections of claim 1 as cited above.

With respect to claim 13, Deaton in view of Smith addressed by the rejections of claims 1 and 2 as cited above.

With respect to claim 14 Deaton in view of Smith addressed by the rejections of claim 1 as cited above.

With respect to claim 15, Deaton in view of Smith teaches all elements of claim 1 including threshold criteria depend upon movie showings data. Deaton does not teach difference in date of release of movies and current date.

However, Smith teaches a system wherein including difference in date of release of movies and current date (***paragraph [0034], which teaches a new movie release date***). Therefore, it would have been obvious to the one ordinary skill in the art at the time of the invention to include a feature to advertise new movie release date to viewers as taught by Smith in the system of Deaton in order to increase a number of viewers.

With respect to claim 16, Deaton in view of Smith teaches all elements of claim 1, except, the system wherein said threshold criteria depend upon time of day, day of week, or day of month. Smith teaches the system wherein said threshold criteria depend upon time of day, day of week, or day of month (***paragraph [0025], teaches showing for a week***). Therefore, it would have been obvious to the one ordinary skill in

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the art at the time of the invitation to include a feature that specify the extended time of the show to viewers as taught by Smith in the system of Deaton in order to increase a number of viewers.

With respect to claim 17, Deaton in view of Smith addressed as cited above.

With respect to claim 18, Deaton in view of Smith addressed by rejection of claim 1 as cited above.

With respect to claim 19, Deaton in view of Smith addressed by rejection of claim 1 as cited above.

With respect to claim 20, Deaton in view of Smith addressed by rejection of claim 1 as cited above.

With respect to claim 21, Deaton in view of Smith teaches all elements of claim 1, furthermore, Deaton teaches the system wherein said device for communicating information to said customer comprises at least one of a visual display device and a printer (**Col. 7, lines 57-59, which teaches monitor (visual display device) and printer**).

With respect to claim 22, Deaton in view of Smith addressed by the rejection of claims 1 and 2 as cited above.

With respect to claim 45, Deaton in view of Smith teaches all elements of claim 44, furthermore, Deaton teaches the system further comprising code for linking transaction data for transactions transacted in the first POS computer system with transaction data for transactions transacted in the second POS computer system based at least in part upon geographic proximity of stores in which transactions



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occurred (**Col. 2, lines 15-24**, which teaches real-time a product purchasing received from a remote location)

With respect to claim 46, Deaton in view of Smith addressed by the rejection of claims 2 and 44 as cited above.

With respect to claim 47, Deaton in view of Smith addressed by the rejection of claims 2 and 44 as cited above.

With respect to claim 48, Deaton in view of Smith addressed by the rejection of claims 2 and 44 as cited above.

With respect to claim 49, Deaton in view of Smith addressed by the rejection of claims 44 as cited above.

The limitations of claims 48 and 49 recite with "contingent upon", which is agreement. An agreement is non-functional descriptive material and was not given patentable weight (MPEP 2106.01). In the sense used in the patent law 5 USC 101), "contingent upon" is not functional because is neither "tied to a particular apparatus" nor "operates to change materials to a different state of thing" (IN RE ::) COMISKEY, CAFC 2006-1286, and September 2007). While the Examiner has addressed the optional limitations in this action, it is the Examiner's opinion that these limitations do not distinguish the claim from the prior art. See MPEP 2106 II C (Paragraph 4+).

With respect to claim 50, Deaton in view of Smith all elements of claims 44 and 49, furthermore, Deaton teaches the system wherein said non-movie theater retail store

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is one of a supermarket, a convenience store, and a gasoline or other motor vehicle fuel station (**Fig. 1, 22**, where "Wholesaler" reads on non-movie theater)

With respect to claim 51, Deaton in view of Smith teaches all elements of claims 44, furthermore, Deaton teaches the system further comprising a central computer system and a network connecting between said first POS computer system, said second POS computer system, and said central computer system (**Figs. 1 and 2A-E** where "UPC server, 12" reads on central computer, connected first POS system (sore (1), 14 and second POS system, 14 Store (2), where "via communication link 26" reads on a network system).

With respect to claim 52, Deaton in view of Smith teaches all elements of claims 44 and 51, furthermore, Deaton teaches the system wherein said central computer system has code for implementing real time processing (**Fig. 10**, (where "ITEM UPC" reads on code) **and Col. 16, lines 58-67**, which teaches UPS server (central computer) facilitates electronic settlement in a real-time bases).

With respect to claim 53, Deaton in view of Smith teaches all elements of claims 44 and 51; furthermore, Deaton teaches the system wherein said central computer system contains a database storing transaction data in records each including fields for at least 7 of the following:

consumer name 503, consumer address, consumer telephone number,  
consumer email address, ID, FSID, UPCs of items purchased, date of transaction,

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price of items purchased, credit card type 519, part or all of credit card number, credit card expiration date, fax number, first FSID, second FSID, first MID1, second MID2, and store ID (**Col. 8, lines 34-44**, which teaches customer name, address, telephone number, customer card, credit/debit card, customer identity, bar code (UPC) and etc... and **Col. 3, lines 66-67 and Col. 4, lines 1-14**)

With respect to claim 57, Deaton in view of Smith addressed by the rejection of independent claims 1, 23, 44 and 58 as cited above.

Claims 4-6, 8-9 and 54-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US Patent No 6,292,786 B1) in view of Smith (US Pub No. 2002/0103849 A1) and in further in view of Klarfeld et al (US Pub No. 2003/0067554 A1).

With respect to claim 4, Deaton in view of Smith teaches all elements of claim 1, including the system wherein said threshold criteria depend upon movie showings data in claim 3. Deaton in view of Smith does not teach movie classification data defining classification or genre of movies.

However, Klarfeld teaches movie classification data defining classification or genre of movies (**paragraph [3336]**, which teaches programs belonging to a specific genre, e.g. movies). Therefore, it would have been obvious to the one ordinary skill in the art at the time of the invitation to include a program/movies genre as taught by

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Klarfeld in the system of Deaton and Smith in order to categorize based on similarities of movies (e.g. drama or action movies ).

With respect to claims 5, Deaton in view of Smith teaches all elements of claim 1, including wherein said threshold criteria depend upon movie showings data. Deaton in view of Smith does not teach movie ratings data defining ratings of movies

However Klarfeld teaches movie ratings data defining ratings of movies (***paragraph [0009], which teach rating movie***). Therefore, it would have been obvious to the one ordinary skill in the art at the time of the invention to include a feature that rates program/movies as taught by Klarfeld in the system of Deaton and Smith in order in order to determine viewer preference for generating higher revenue.

With respect to claim 6, Deaton in view of Smith and in further view of Klarfeld addressed by the rejection of claim 5 as cited above.

With respect to claim 8, Deaton in view of Smith and in further view of Klarfeld addressed by the rejection of claims 1 and 5 as cited above.

With respect to claim 9, Deaton in view of Smith in further view of Klarfeld addressed by the rejection of claims 1, 4 and 5 as cited above.

With respect to claims 54-56, Deaton in view of Smith in further view of Klarfeld teaches all elements by the above citation except the location of movie theater store. However, Smith teaches the location of movie theater store (***paragraph [0027], where "event location" reads on location of Movie Theater and paragraph [0038], which teaches another theater***). Therefore, it would have been obvious to the one ordinary skill in the art to include a feature that identify the location of Movie Theater as taught

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by Smith into the system of Deaton and Klarfeld in order to schedule more shows and for directing viewers to the nearest location.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SABA DAGNEW whose telephone number is (571)270-3271. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James W. Myhre can be reached on 571-272-6722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Saba Dagnew/  
Examiner, Art Unit 3688

/Raquel Alvarez/  
Primary Examiner, Art Unit 3688

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